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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,258	06/30/2003	Leonard Arthur Jubinville	LAMA121319	2779

26389 7590 04/19/2004

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EXAMINER

CHUKWURAH, NATHANIEL C

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/611,258

Applicant(s)

JUBINVILLE, LEONARD ARTHUR

Examiner

Nathaniel C. Chukwurah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 and 8 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5, 7 and 9-11 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/9/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 12-14, drawn to tethering line adjacent to the second end of the housing, classified in class 119, subclass 771.
- II. Claims 1-11, drawn to a post with integral hammer and anvil classified in class 173, subclass 91.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions as set forth above in the two groups rely upon particulars for patentability, which are not set forth in the other group. Specifically, group I recites the tethering line, which is not set forth in group II. Further, group II recites the hammer and housing, which is not set forth in group I.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Kevan Morgan on 4/13/2004 a provisional election was made without traverse to prosecute the invention of group II, claims 1-11.

Affirmation of this election must be made by applicant in replying to this Office action.

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Claims 12-14 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 7, 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, the scope of the claim cannot be determined. Claim 7 recites the tethering line and no other details of the post. However, Claim 6 merely recited the post, not a combination of a post and a tethering line. Claim 9 recites "a second transverse passage....thereby engaging the anvil". This appears to be inaccurate since it is the locking pin which engages the anvil, not the passage. Claim 10 appears to be inaccurate since the transverse passage, as recited on the fourth to last line does not extend through the anvil as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulson (US 3,143,817) in view of Cline (US 4,662,305).

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Paulson discloses a post comprising: an elongated ground piercing member (10) having a ground piercing end (11); an anvil (13) having a first striking face (upper end) and second striking face (lower end); a tubular housing (14) having a first end (upper end) and a second end (lower end); a first hammer (16) and a second hammer (15); and "an attachment tab" (19) capable of receiving a tethering line attached thereto, if desired. The tethering line is given little, if any patentable weight since the line is not claimed, per se.

Paulson lacks a lock and a transverse passage. However, Cline teaches a lock (32 clip) engaging a ground piercing member (25). In view of the teachings of Cline, it would have been obvious to one skilled in the art to provide the post of Paulson with a lock and a transverse passage in order to prevent the ground piercing member from rotating about its axis (col. 4, lines 6-7).

Regarding claims 5 and 11, applicant is given Official Notice that to provide a locking pin with an aperture for receiving a padlock is known. Therefore, in view of the Official Notice, it would have been obvious to one skilled in the art to provide Paulson with a locking pin having an aperture at an end for providing a more secure device.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Paulson (US 3,143,817) in view of Cline as applies to claim 1 and further in view of Sullivan (US 2,790,419).

Modified Paulson lacks the teaching of attaching a tethering line. However, Sullivan teaches means (52 stud fig. 4) including a hole, adjacent to second end of the housing, provided to attach a tethering line.

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Therefore, it would have been obvious to one skilled in the art to provide the post of Paulson with means to attach a tethering line in order to secure to a collar of a desired animal (col. 2, line 42).

Allowable Subject Matter

Claims 6 and 8 are allowed.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7 and 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (703) 308-6385. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nc



SCOTT A. SMITH
PRIMARY EXAMINER